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The Honorable Shirley Weber
Member, California State Assembly
State Capitol, Room 3123
Sacramento, CA 95814
via email: Anthony.DiMartino@asm.ca.gov

RE: AB 931 (Weber) – Support if Amended

Dear Assemblymember Weber:

I am writing to state my support for AB 931 subject to the bill being amended as discussed below. The bill is a substantial improvement upon existing law; the way that it regulates police uses of deadly force will improve the safety of officers and community members alike.

I am a law professor who studies the regulation of policing, including the use of force. I am also a former police officer. For the last several years, I have written about the use of force in both academic journals and popular media publications, as well as provided subject matter expertise and expert testimony related to police procedure, tactics, and the use of force. My conditional support for AB 931 is grounded not only in my academic research, but also by my own experiences conducting stops, making arrests, and using force.

As it currently stands, the California statute governing justifiable homicide by public officials is painfully outdated. Penal Code 196 was enacted in 1872 and has not been amended since, making it the single oldest unamended use-of-force statute in the country.[1] In its current form, the law reflects what is known as the "fleeing felon" rule for deadly force: officers are permitted to use deadly force when the use of deadly force is "necessarily committed in overcoming actual resistance to the

[1] The only states that enacted similar laws prior to California are Vermont (1787), Tennessee (1858) and Georgia (1863). Idaho followed suit shortly thereafter (1887). All four states have re-codified or amended their laws multiple times since, with Vermont doing so 11 times (mostly recently in 1983), Tennessee doing so twice (most recently in 1990), Georgia doing so 14 times (most recently in 2013), and Idaho doing so four times (most recently in 1987). For further comparison, 42 states have a total of 58 different statutes that regulate at least some uses of force. Almost half (28) of the statutes were enacted in the 1970s; of the 30 others, 20 were adopted prior to the 1970s and the remaining 10 were enacted after. Of the 58 statutes, only 15 have never been amended.

execution of some legal process"[2] and when "necessarily committed in arresting persons charged with [a] felony, and who are fleeing from justice or resisting such arrest."[3] Once commonly accepted, the "fleeing felon" rule has been repeatedly abrogated by the states through statute and caselaw: a 2016 study found that it was still clearly in effect in only twelve states.[4] More tellingly, the "fleeing felon" rule was rejected by the Supreme Court in 1985, when it held that the Fourth Amendment permits the use of deadly force only when an officer "has probable cause to believe that the subject poses a significant threat of death or serious physical injury to the officer or others."[5] California Penal Code 196 is clearly in need of revision.

The need for revision is even clearer in light of how challenging and divisive police uses of force have become. I would be remiss if I did not mention first that the use of force, especially the use of deadly force, is relatively rare. According to the best available data—which admittedly are not as robust as I would prefer—only a small percentage of police-civilian contacts every year in the United States involve a threat or actual use of force.[6] Even in the context of interactions that involve the types of inherently coercive police action that are most likely to elicit civilian resistance, such as arrests, violence is the exception, not the rule. And on those occasions when officers do use force, the vast majority of incidents involve low-level violence with little potential for injury: grabbing, shoving, and the like. But although the proportion of police-civilian encounters that involve violence are quite modest, the small percentage masks large absolute numbers. Even if force is used in only 1% of police-civilian encounters, the fact that there are, on average, more than 60 million such encounters annually in the United States means that there are at least 600,000 uses of force every year. That's more than one every minute in every hour of every day of the year. Most of the time, officers are not using force to defend themselves: according to the FBI's Law Enforcement Officers Killed & Assaulted data, there were, on average, about 56,000 assaults on officers per year over the last ten years. That suggests that, nationally, officers use force for reasons other than self-defense on at least 544,000 occasions each year. That breaks down to almost 1,500 every day, which is still more than one per minute. Those numbers are at the low end of the spectrum based on Bureau of Justice Statistics data; if more than 1% of police-civilian encounters involve the use of force or if there are more than 60 million encounters in a given year, the absolute numbers may be significantly larger.

The use of force is, and should be, of central concern to the state legislature for at least two reasons. First, police violence implicates critical questions about the relationship between government and the

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[2] CAL PENAL CODE § 196(2).
[3] CAL PENAL CODE § 196(3).
[4] Chad Flanders & Joseph Welling, *Police Use of Deadly Force: State Statutes 30 Years After* Garner, 35 ST. LOUIS U. PUB. L. REV. 109, 124 (2015) *available at* https://bit.ly/2Jw2hP4.
[5] Tennessee v. Garner, 471 U.S. 1,3 (1985).
[6] The exact number depends on which study one relies upon. See, e.g., Shelley Hyland et al., U.S. Dep't of Justice, Bureau of Justice Statistics, Police Use of Nonfatal Force, 2002-2011, at 1 (2015), https://bit.ly/2sZ0kDz (reporting that, over a ten-year period, an average of 1.6% of the annual average of 43.9 million police contacts involved the use of or threatened use of force); Christine Eith & Matthew R. Durose, U.S. Dep't of Justice, Bureau of Justice Statistics, Contacts Between Police and the Public, 2008, at 6, 12 (2011), https://bit.ly/1bv3Ac7 (reporting that, in 2008, about 1.4% of the 67 million police contacts involved the use of or threatened use of force); Int'l Assoc. of Chiefs of Police, Police Use of Force in America 2001, at i–ii (2001), https://bit.ly/2HDqocT (finding that, in 1999, officers used force in 0.0361% of calls for service). As Brandon Garrett and I have written, "A regrettable lack of standardization makes the different numbers difficult to compare; exactly what definition of 'force' a study adopts and whether it standardizes 'calls for service' or officer-civilian encounters or the number of sworn officers can dramatically affect the end result." *A Tactical Fourth Amendment*, 103 VA. L. REV. 211, 244 N. 150 (2017), https://bit.ly/2MgTi67.

governed in a free society. The government's use of force against its own citizens is in tension with our most basic democratic notions of freedom, liberty, security, and autonomy. Our system of democratic republicanism is premised on the belief that a non-tyrannical government can rule only with the consent of the governed. A sophisticated civilization must balance individuals' interest in liberty and privacy against the societal interest in order and security, but if our democratic ideals are to mean anything, that balancing must be carefully managed. The tension between protection from and the need for governmental intrusion is particularly acute in the context of police uses of force, especially considering longstanding frictions with, and disparate treatment of, communities of color.

Second, the use of force plays an important—indeed, an over-sized—role in shaping public attitudes toward government generally and policing more specifically. Community trust and confidence in the police is undermined by the perception that officers are using force unnecessarily, too frequently, or in problematically disparate ways. Over time, negative perceptions of the police can reduce civilian cooperation with government authority, making it far more difficult for officers to enforce the law, maintain order, and protect the public. Worse, public distrust can be dangerous for officers and community members alike. The use of force can be a flashpoint, a spark that ignites long-simmering community hostility. Use of force incidents have had lasting reverberations, from the televised abuses of the Civil Rights Era to the beating of Rodney King in 1991 or the shooting of Walter Scott in 2015. Of the ten most violent and destructive riots in United States history, fully half were prompted by what were perceived as incidents of excessive force or police abuse.[7] The perception that police uses of force are appropriately regulated will, it is hoped, contribute to an increase in police legitimacy that can make officers safer and more effective.

Assembly Bill 931 is, for the most part, a much-needed update. As I understand the proposal, it would be an improvement on existing law in the following ways:

1) **The proposed law makes clear that the sanctity of human life is policing's highest priority.**

Assembly AB 931 would amend existing law to state explicitly that the authority of the police to use force "is a serious responsibility that must be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life." While it should go without saying that the preservation of human life is the very highest priority in policing, having a clear legislative statement to that effect serves as a valuable reminder that policing is at its best when it is practiced in a way that protects community members from unnecessary indignity and harm.

2) **The proposed law adopts a feasible standard that appropriately limits the use of deadly force to those situations that present an imminent threat of death or great bodily harm to officers or others that cannot safely be resolved through non-deadly means.**

Assembly Bill 931 recognizes that officers will, on occasion, be confronted with situations that require the use of deadly force. Under the proposal, the use of deadly force is justified when there is an imminent threat of death or great bodily harm (to the officer or any other person) and a reasonable officer in that situation would not perceive any way, other than the use of deadly force, to safely address that threat. This strikes an appropriate balance between permitting officers to use force when the situation could likely be resolved safely with non-deadly measures on the one hand and

[7] Daniel Bukszpan, *America's Most Destructive Riots of All Time*, CNBC (Feb. 1, 2011), https://cnb.cx/2MjJwQv.

precluding officers from using deadly force when it is required on the other.

Any objection that the proposed language is overly restrictive fails to take in to account that AB 931 explicitly incorporates the perspective of a reasonable officer. The law permits officers to use deadly force in those situations where it is "necessary to prevent imminent and serious bodily injury or death," and it defines "necessary" as those situations in which, "given the totality of the circumstances, a reasonable peace officer would conclude that there was no reasonable alternative to the use of deadly force that would prevent imminent death or serious bodily injury." In short, under the proposal as I understand it, the use of deadly force is justified if a reasonable officer on the scene would conclude that there was no reasonable alternative that could address an imminent threat of death or great bodily harm.

I understand an alternative to be "reasonable" only when it does not unjustifiably increase the danger to officers or bystanders; thus, an alternative that makes the situation any less safe for officers or bystanders should not generally be considered reasonable.[8] Options that avoid the use of deadly force without exposing the officers to any additional threat, or which affirmatively reduce the imminence or severity of the threat that officers face, are generally to be preferred.

To be clear, I expect that there will be relatively few situations in which there will be an imminent threat of death or great bodily harm *and* reasonable alternatives to the use of deadly force. That belief is predicated on the proper understanding of what it means for a threat to be "imminent": an imminent threat exists only when the officer reasonably perceives that the subject has the capability, opportunity, and intent to cause death or great bodily harm.[9]

- **Capability** means the subject reasonably appears to have the physical ability to cause death or great bodily harm through some explicitly identified means or mechanism. For example, a subject with a knife has the capability to cause death or great bodily harm by stabbing.
- **Opportunity** refers to the subject's proximity to the potential target(s) in light of the type of threat they present. For example, a subject with a knife who is standing a block away from officers may have the capability to cause death or great bodily harm, but he lacks the opportunity to do so; therefore, there is no imminent threat to officers in that moment. There is no set distance at which an individual does or does not have the opportunity to physically injure an officer; that determination depends on the facts and circumstances of each case.[10]

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[8] I respectfully suggest explicitly defining "reasonable alternatives," incorporating my definition or one with similar language, in future amendments.
I will also note that measuring the risk of specific actions in various situations is a familiar task in our legal system. Perhaps most relevantly, it appears in the self-defense context and in the Due Process context. In the self-defense context, the common law imposed a duty to retreat *when it was safe to do so* before using deadly force. Thus, courts determine whether retreat in a given situation would have been safe. More relevantly, in the Due Process context, the Fourteenth Amendment does not generally impose on the government an affirmative duty to protect individuals from harm committed by non-governmental actors. However, the government can be liable for such harm when it creates a danger or exacerbates an existing danger. Thus, courts are called upon to determine whether the governmental action in any given situation increased the danger, decreased the danger, or merely left the subject in the same position that they were in prior to the government action.

[9] I respectfully suggest explicitly defining "imminent," incorporating my definition or one with similar language, in future amendments.

[10] Most prominently, whether the subject has the opportunity to cause death or great bodily harm at any given distance depends on the existence and nature of any weapons the subject has (a subject with a rifle has the opportunity to cause harm at a far greater distance than a subject with a knife) and the relative positioning of the subject and the officers or bystanders (a subject may have the opportunity to shoot officers standing out in the open, but not officers who have taken positions of cover).

- **Intent** refers to the subject's perceived mental state, their apparent desire to cause physical harm to the target or targets. Because officers, like everyone else, lack the ability to divine another's intentions by peering into their mind, officers must rely on behavioral indicators, physical manifestations indicative of intent. To take an obvious example, lunging at an officer with a knife is a clear physical manifestation of the intent to stab the officer. In contrast, an individual who is merely conversing with an officer while standing next to a knife block in the kitchen does not present any physical behaviors from which an officer could identify an intent to use the knife aggressively. Importantly, intent may be properly articulated through a combination of multiple factors even if no individual factor is sufficient on its own. To continue the previous example, merely holding a knife is not in and of itself indicative of the intent to cause harm. Walking toward an officer is not in and of itself indicative of the intent to cause harm. Failing to obey an officer's commands is not necessarily in and of itself indicative of the intent to cause harm. However, walking toward an officer while holding a knife and ignoring the officer's commands to stop or drop the weapon, in combination, can certainly be indicative of the individual's intent.

When officers have made specific and articulable[11] observations that lead to the reasonable conclusion that all three aspects of threat—capability, opportunity, and intent—exist, then that threat may be fairly said to be "imminent." That is not to say that officers must wait until they or another person are under attack. The threat must be imminent, but it need not have fully manifested into an actual assault. There is, for example, no requirement that a police officer wait until a subject armed with a firearm shoots to confirm that a serious threat of harm exists.[12] The "imminent" standard in AB 931, as I understand it, allows for the situations in which an officer must react to an imminent threat before it progresses into an assault so long as the officer can articulate, and a reasonable officer on the scene would agree, that the situation presented a threat as that term is properly understood.

It is also worth noting that any objection that AB 931 uses the word "necessary" (instead of "reasonable") is misguided. The proposed verbiage is not, in and of itself, a meaningful change from current law. The current version of California Penal Code 196 states that homicide by a public official is justified only when it is "necessarily committed" for the various reasons listed. This verbiage is well aligned with the law in other states: according to a comprehensive review of state statutes, 42 states have a total of 58 different statutes that govern police uses of force or deadly force, with almost all of them taking the approach that I read AB 931 to take: force is permitted when the officer on the scene reasonably believes it is necessary.

3) The proposed law increases the safety of officers and community members alike by encouraging appropriate tactics.

Assembly Bill 931 properly incorporates a consideration of tactics into the review of deadly force situations. Under the proposed law, even if an officer is otherwise justified in using deadly force, a homicide will not be justified when the officer's "gross negligence substantially contributed to making [the use of deadly force] necessary."

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[11] An officer's conclusory statement that she feared for her safety or for the safety of others is insufficient to establish that there was an imminent threat of death or great bodily harm. Put differently, a threat is not imminent merely because the officer was honestly afraid – an officer may honestly have been afraid in situations where that perception or fear was unreasonable and there was no imminent threat.

[12] See, e.g., Elliott v Leavitt, 99 F 3rd. 640, 643 (4th Cir. 1996)

As much as I might wish it was not the case, policing can be dangerous. The risk that officers face should not be ignored or underestimated.[13] The nature of policing itself will sometimes require officers to put themselves in harm's way to serve and protect the public. It is officers, after all, who run toward the sound of gunfire. However, officers should not take unreasonable risks; they may have to put themselves in harm's way, but only when it is professionally appropriate. This restriction helps preserve the safety of both officers and community members. An officer who puts herself into harm's way not only exposes herself to a physical threat but increases the likelihood that she will have to use force to address that threat. Some situations demand exactly such an approach, but others do not. When an officer unnecessarily places herself into jeopardy, she creates a risk—to the safety of any bystanders, to her own safety, and to the safety of the subject—that another approach would have avoided.[14]

Of course, use-of-force scenarios, especially deadly force encounters, can be intense. Officers may be called upon to make life or death decisions in highly time-compressed situations. In such circumstances, tactical missteps are all but inevitable. Assembly Bill 931 recognizes this. The proposal would not make officers liable for every tactical misstep, even those that ultimately contributed to and resulted in a use of deadly force. Instead, it would expose officers to liability only when they are grossly negligent. In this context, an officer acts with gross negligence when their conduct is such a departure from the way an ordinarily prudent or careful officer would have acted in the same situation that it amounts to disregard for human life or indifference to the consequences of that act.

Officers who use reasonable tactics have nothing to fear. Officers who make tactical missteps, even serious mistakes, will remain protected by state law unless their actions are so egregious as to amount to a blatant disregard for human life (and then only if their actions substantially contribute to a death that was otherwise avoidable). This strikes an appropriate balance between ignoring police tactics and rendering officers criminally liable for every tactical misstep.

4) The proposed law protects individuals experiencing psychological distress.

Assembly Bill 931 appropriately precludes the use of deadly force against subjects who present a risk only to themselves. Nationally, the best available data suggest that a disturbingly high percentage of use-of-force incidents, including deadly force incidents, involve subjects experiencing cognitive impairments as the result of mental illness or their use of psychoactive substances. The use of deadly force is not an effective or appropriate way to respond to a subject who presents only the potential for self-harm, even lethal self-harm.

For the foregoing reasons, I believe that AB 931 is a significant advancement over existing law.

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[13] Nor should they be exaggerated; according to the best available data, there has been a long-term decline in both the absolute numbers and the per capita proportion of officers who are feloniously killed or assaulted in the line of duty.

14 Perhaps the paradigmatic example of officer-created jeopardy is an officer who steps in front of a subject's moving vehicle – such an action takes the officer out of a position of relative safety (out of the vehicle's path) and into a position of relative danger (in the vehicle's path), despite the fact that the officer's positioning cannot achieve the desired end (preventing the vehicle from moving). For more on officer-created jeopardy, see Jeffrey J. Noble & Geoffrey P. Alpert, *State Created Danger: Should Police Officers be Accountable for Reckless Tactical Decision Making?*, in CRITICAL ISSUES IN POLICING: CONTEMPORARY READINGS (Roger Dunham & Geoffrey Alpert, eds., 7th ed., 2015).

I would also like to take this opportunity to address two objections to AB 931 that I have heard in discussing the legislation and the ideas behind it with community members and law enforcement officials in California and beyond:

1) **The proposed law is not inconsistent with the constitutional standard**.

In 1989, the Supreme Court held that, because the use of force against civilians constitutes a seizure under the Fourth Amendment, the Fourth Amendment regulates when officers can constitutionally use force. The Supreme Court set out the constitutional standard in *Graham v. Connor*.[15] To paraphrase, the *Graham* standard states that officers' uses of force must be objectively reasonable under the circumstances as perceived by a reasonable officer on the scene. The Supreme Court provided a non-exclusive list of factors (known as the "*Graham* factors"[16]) that officers and other actors can refer to in determining whether a particular use of force was objectively reasonable.[17] This makes answering the constitutional question in use-of-force cases a "highly fact-intensive" process[18] that, unfortunately, does not offer much in the way of meaningful guidance to officers in the field.

The constitutional standard is a minimum level of protection for individual rights; states and local police agencies cannot constitutionally authorize officers to use any more force than that which would be objectively reasonable. In our federal system, however, states and agencies are free to be more protective of individual rights than the Constitution requires. In this context, states and agencies are free to adopt a more refined standard than *Graham*'s "objective reasonableness." That

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[15] Graham v. Connor, 490 U.S. 386 (1989).

[16] First, the severity of the crime at issue must be considered. Second, the immediate threat to officers and others posed by the subject must be evaluated. Third, whether the subject is actively resisting or attempting to evade arrest by fleeing. The Court added additional factors by recognizing the importance of the proportionality of the force used, and the totality of circumstances. *Id*. Commentators have described how these factors may be irrelevant or even misleading in any given case. *See* Rachel Harmon, *When is Police Violence Justified?*, 102 NORTHWESTERN L. REV. 1 (2008), https://bit.ly/2JBRzqg. As I have written:

> The crime's severity is, at best, a loose proxy for dangerousness that officers can use in the absence of other information. At worst, however, it is entirely irrelevant, as when officers are defending themselves from a sudden attack by someone who was not subjected of committing any underlying crime or when arresting a fully compliant subject even for a very serious crime.
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> The remaining factors are little better. For each factor, the answers are binary; someone is actively resisting or they are not. Although that simplistic distinction can help answer the question of whether force was justified, it provides no assistance in identifying what type of force or how much force was appropriate. And these factors, too, can be misleading. A hyper-obese octogenarian may satisfy the third factor by attempting to "evade arrest" by fleeing on foot, but that would hardly ever require a forceful response.

Seth W. Stoughton, *Regulating the Reasonableness of Police Violence*, THE REGULATORY REVIEW, Feb. 14, 2017, https://bit.ly/2xZDFwX.

[17] Unfortunately, the constitutional standard offers little in the way of detailed guidance to officers in actual use-of-force situations. As I have written elsewhere:

> Imagine that you agree to participate in a game or competition of some sort, one that you are not intimately familiar with. Perhaps the first thing you would do is review the rules. After all, you cannot train, practice, or prepare appropriately without knowing what you can and cannot do. But when you receive the rulebook, you find it consists of exactly three words: "Be objectively reasonable." That is not very helpful, is it?

Seth W. Stoughton, *Regulating the Reasonableness of Police Violence*, THE REGULATORY REVIEW, Feb. 14, 2017, https://bit.ly/2xZDFwX.

[18] Scott v. Harris, 550 U.S. 372, 383 (2007).

is to say, *Graham* provides a constitutional "floor" that state law is free to exceed.

It does not contradict, nor is it inconsistent, with the constitutional standard for states to adopt laws that regulate the use of force, including deadly force, in ways not contemplated within the *Graham* opinion. Indeed, multiple states have done so. Colorado[19] and Illinois,[20] for example, both have statutes that regulate police use of chokeholds. Further, police agencies themselves commonly exceed the bare constitutional standard. In an article published last year, Brandon Garrett and I found that while most of the use-of-force policies we reviewed do include the *Graham* standards in their training and in the administrative regulations that govern the use of force, many agencies also go beyond the *Graham* standard in various ways.[21] The fact that agencies regularly restrict certain weapons or force options when *Graham* does not do so itself establishes that it is entirely routine for agencies to go beyond the minimum constitutional requirements laid out in *Graham*.

This indisputable principle about the hierarchy of laws in our federal system has already been recognized in California law. In 2013, the California Supreme Court held that "state negligence law, which considers the totality of the circumstances surrounding any use of deadly force, is broader than federal Fourth Amendment law, which tends to focus more narrowly on the moment when deadly force is used. . . . [A prior case] suggested our acknowledgment that the state and federal standards are not the same, which we now confirm."[22]

2) The proposed law does not dramatically expand prosecutors' ability to charge officers.

Assembly Bill 931 does not encourage or present a significant risk of prosecutorial overreach. According to the California Rules of Professional Conduct, prosecutors can only prosecute a charge supported by probable cause.[23] Right now, an officer may be charged with a homicide offense and will not benefit from the "justifiable homicide by a public official" defense codified in Penal Code 196 when there is at least probable cause to believe that the homicide was not "necessarily committed" for one of the reasons identified in the statute.

Under AB 931, a prosecutor could criminally charge an officer with a homicide offense when one of two things are true: First, when there is at least probable cause to believe that an officer acted in a way that is such a departure from the way an ordinarily prudent or careful officer would have acted in the situation that it amounts to disregard for human life and where a reasonable officer in the situation would foresee that the action would cause a high degree of risk of death or great bodily harm. Second, when an officer used deadly force in a situation where there is at least probable cause to believe that a reasonable officer, faced with the facts available to the actual officer at the time, would have concluded that there was a way to safely address the situation without using deadly force.

I do not believe that any prosecutor who wanted to present a case that meets the standards for criminal liability under AB 931 would have any trouble prosecuting an officer for failing to meet the

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[19] COLO. REV. STAT. § 18-1-707(2.5)
[20] 720 ILL. COMP. STAT. 5/7-5.5.
[21] Brandon L. Garrett & Seth W. Stoughton, *A Tactical Fourth Amendment*, 103 VA. L. REV. 211 (2017)).
[22] Hayes v. City. of San Diego, 57 Cal. 4th 622, 639, 305 P.3d 252, 263 (2013) (citations omitted).
[23] Rule 5-110(A). Additionally, my understanding is that many prosecutors, in California and elsewhere, accept the standards laid out by the American Bar Association: prosecutors should pursue charges only when they reasonably believe "that admissible evidence will be sufficient to support conviction beyond a reasonable doubt." Criminal Justice Standards for the Prosecution Function, Standard 3-4.3(a).

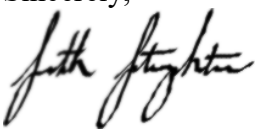
current "necessarily committed" language in Penal Code 196. In short, I do not believe that AB 931 substantially or problematically expands prosecutorial authority.

Finally, I would like to express my concern about two provisions of the bill as it is currently written. Specifically, the factor "whether the officer's conduct was consistent with applicable training and policy" into evaluation of a use of deadly force. As I have expressed elsewhere,[24] this could create a perverse incentive for police agencies to adopt lax policies, which officers are less likely to violate, as a way to insulate officers from liability. Meanwhile, officers at agencies with stricter policies may be exposed to greater criminal liability. This, in my view, is a fatal flaw in the current proposal. However, I understand that you have proposed amendments that would remove the references to the officer's training and agency police that are currently in your proposed Penal Code § 835a(d)(4)(A) ("tactics set forth in the officer's training or in policy") and (d)(4)(B) ("whether the officer's conduct was consistent with applicable training and policy"). If those two provisions are removed, I support the bill in full.

As described above, I also have some concerns about the way that the language in the bill may be interpreted. Specifically, I am concerned about "imminent" in Penal Code § 835a(d)(1), (d)(2), (d)(3), and (d)(4)(A); and "reasonable alternative" in Penal Code § 835a(d)(4)(A). Having laid out my understanding of how those terms should be interpreted above, I see no reason to restate those points here.

I am available by phone at (803) 777-3055 and via email at swstough@law.sc.edu.

Sincerely,



Seth Stoughton

cc: Members, Senate Committee on Public Safety

[24] See Arif Alikhan & Seth Stoughton, *Deadly Force Proposal Needs Work*, CAPITOL WEEKLY, May 29, 2018, https://bit.ly/2LFWUNP; Arif Alikhan & Seth Stoughton, *Well-Intentioned AB 931 Comes with Fatal Flaws*, SAN FRANCISCO EXAMINER, June. 11, 2018, https://bit.ly/2sPncGm.